

MT LEGISLATIVE HISTORY

Chapter 323 1991

Bill H _____ S 383

Original bill & hist. ☒ C

H. Committee on Labor & Employment Relations

S. Committee on Labor & Employment Relations

Hearing Date(s) Mar 13 ☒ C

Hearing Date(s) Feb 21 ☒ C

Mar 15 ☒ C

Feb 23 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 18 ☒ C

Feb 23 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☒ No

Committee _____

Report _____

SB 381 INTRODUCED BY JACOBSON, ET AL.

ESTABLISH AN ALTERNATIVE HEALTH CARE BOARD

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/14	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	49	0
2/26	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO HUMAN SERVICES & AGING		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	86	0
3/18	3RD READING CONCURRED	98	0
	RETURNED TO SENATE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS CONCURRED	47	0
3/25	3RD READING AMENDMENTS CONCURRED	46	2
3/28	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/08	RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS		
4/09	MOTION FAILED TO NOT CONCUR WITH GOVERNOR'S AMENDMENTS ON 2ND READING	13	32
4/09	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	35	10
4/10	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	1
	TRANSMITTED TO HOUSE		
4/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	99	0
4/17	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 524		

EFFECTIVE DATE: 4/22/91

SB 382 INTRODUCED BY BENGTON

REQUIRE STATE HOSPITAL ACCREDITATION BY 1993

2/14	INTRODUCED
2/14	FIRST READING
2/14	REFERRED TO FINANCE & CLAIMS
2/14	FISCAL NOTE REQUESTED
2/20	FISCAL NOTE RECEIVED
2/21	FISCAL NOTE PRINTED
3/07	HEARING
3/07	TABLED IN COMMITTEE

✓ SB 383 INTRODUCED BY WEEDING, ET AL.

REVISE CERTAIN PROVISIONS OF THE WORKERS'
COMPENSATION ACT

BY REQUEST OF WORKERS' COMPENSATION STATE FUND

2/14	INTRODUCED
2/14	FIRST READING
2/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS

2/14	FISCAL NOTE REQUESTED		
2/19	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/21	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	49	0
2/26	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/13	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED		
3/20	2ND READING CONCURRED	97	2
3/21	3RD READING CONCURRED	98	1
	RETURNED TO SENATE		
3/27	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 323		
		EFFECTIVE DATE: 7/01/91	

SB 384 INTRODUCED BY LYNCH, ET AL.

REFERENDUM TO IMPOSE A STATEWIDE 2-MILL LEVY FOR
VOCATIONAL & TECHNICAL EDUCATION

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO TAXATION		
2/14	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE PRINTED		
2/18	FISCAL NOTE RECEIVED		
3/07	HEARING		
3/23	COMMITTEE REPORT—BILL PASSED		
3/25	2ND READING PASSED	32	15
3/26	3RD READING PASSED	32	18
	TRANSMITTED TO HOUSE		
3/26	FIRST READING		
3/26	REFERRED TO TAXATION		
4/03	HEARING		
4/11	COMMITTEE REPORT—BILL CONCURRED		
4/12	2ND READING CONCURRED	55	42
4/13	ON MOTION RULES SUSPENDED TO TAKE FROM 3RD READING AND PLACE ON 2ND READING		
4/17	2ND READING CONCURRED AS AMENDED	53	47
4/17	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/17	3RD READING CONCURRED	53	45
	RETURNED TO SENATE WITH AMENDMENTS		
4/18	2ND READING AMENDMENTS CONCURRED	27	17
4/19	3RD READING AMENDMENTS CONCURRED	28	21
4/23	SIGNED BY PRESIDENT		
4/23	SIGNED BY SPEAKER		
	(THIS BILL IS A REFERENDUM MEASURE AND DOES NOT REQUIRE GOVERNOR'S SIGNATURE)		
4/26	FILED WITH SECRETARY OF STATE		
	CHAPTER NUMBER 653		
		EFFECTIVE DATE: 12/31/92 - CONTINGENT UPON APPROVAL BY ELECTORATE	

SB 385 INTRODUCED BY KEATING

ESTABLISH INDUSTRIES PROGRAMS AT YOUTH CORRECTIONAL
FACILITIES
BY REQUEST OF DEPARTMENT OF FAMILY SERVICES

Senate BILL NO. *383*

INTRODUCED BY *Sen. [unclear]*

BY REQUEST OF THE STATE FUND

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION ACT; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-414, 39-71-431, 39-71-704, 39-71-741, 39-71-2311, 39-71-2339, 39-72-601, AND 39-72-602, MCA; AND REPEALING SECTION 39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as

defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (3)(a) through (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e) of this section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Days" means calendar days, unless otherwise specified.

(7) "Department" means the department of labor and industry.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(13) "Payroll", "annual payroll", or "annual payroll for

the preceding year" means the average annual payroll of employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund to the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition existing after a worker has reached maximum healing, in which the worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(21)~~(22) "Temporary total disability" means a condition

resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(23) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(22)~~(24) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-117, MCA, is amended to read:

"39-71-117. **Employer defined.** (1) "Employer" means:

~~(1)~~(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

~~(2)~~(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to

operate as self-insured under plan No. 1 of this chapter.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a temporary worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a temporary worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a temporary worker to another has obtained workers' compensation insurance in Montana both at the inception of employment and during all phases of the work performed for the worker.

(4) Notwithstanding the provisions of subsection (3), a common or contract motor carrier doing business in this

state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 3. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1)

The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by

1 the provisions of the compensation law for these casual
2 employments, as provided in 39-71-401(2). Household or
3 domestic service is excluded.

4 (b) a recipient of general relief who is performing
5 work for a county of this state under the provisions of
6 53-3-303 through 53-3-305 and any juvenile performing work
7 under authorization of a district court judge in a
8 delinquency prevention or rehabilitation program;

9 (c) a person receiving on-the-job vocational
10 rehabilitation training or other on-the-job training under a
11 state or federal vocational training program, whether or not
12 under an appointment or contract of hire with an employer as
13 defined in this chapter and whether or not receiving payment
14 from a third party. However, this subsection does not apply
15 to students enrolled in vocational training programs as
16 outlined above while they are on the premises of a public
17 school or community college.

18 (d) students enrolled and in attendance in programs of
19 vocational-technical education at designated
20 vocational-technical centers; or

21 (e) an airman or other person employed as a volunteer
22 under 67-2-105.

23 (2) (a) If the employer is a partnership or sole
24 proprietorship, such employer may elect to include as an
25 employee within the provisions of this chapter any member of

1 such partnership or the owner of the sole proprietorship
2 devoting full time to the partnership or proprietorship
3 business.

4 (b) In the event of such election, the employer must
5 serve upon the employer's insurer written notice naming the
6 partners or sole proprietor to be covered and stating the
7 level of compensation coverage desired by electing the
8 amount of wages to be reported, subject to the limitations
9 in subsection (2)(d). A partner or sole proprietor is not
10 considered an employee within this chapter until such notice
11 has been given.

12 (c) A change in elected wages must be in writing and is
13 effective at the start of the next quarter following
14 notification.

15 (d) All weekly compensation benefits must be based on
16 the amount of elected wages, subject to the minimum and
17 maximum limitations of this subsection. For premium
18 ratemaking and for the determination of weekly wage for
19 weekly compensation benefits, the electing employer may
20 elect not less than \$900 a month and not more than 1 1/2
21 times the average weekly wage as defined in this chapter.

22 (3) An employee, workman, or worker in this state whose
23 services are furnished by a person, association, contractor,
24 firm, or corporation, other than a temporary service
25 contractor, to an employer as defined in section 39-71-117

1 is presumed to be under the control and employment of the
 2 employer. This presumption may be rebutted as provided in
 3 39-71-117(4).

4 (4) For purposes of this section, an "employee,
 5 workman, or worker in this state" means:

6 (a) a resident of Montana who is employed by an
 7 employer and whose employment duties are primarily carried
 8 out or controlled within this state; or

9 (b) a nonresident of Montana whose principal employment
 10 duties are conducted within this state on a regular basis
 11 for an employer."

12 **Section 4.** Section 39-71-414, MCA, is amended to read:

13 "39-71-414. Subrogation. (1) If an action is prosecuted
 14 as provided for in 39-71-412 or 39-71-413 and except as
 15 otherwise provided in this section, the insurer is entitled
 16 to subrogation for all compensation and benefits paid or to
 17 be paid under the Workers' Compensation Act. The insurer's
 18 right of subrogation is a first lien on the claim, judgment,
 19 or recovery.

20 (2) (a) If the injured employee intends to institute
 21 the third party action, he shall give the insurer reasonable
 22 notice of his intention to institute the action.

23 (b) The injured employee may request that the insurer
 24 pay a proportionate share of the reasonable cost of the
 25 action, including attorneys' fees.

1 (c) The insurer may elect not to participate in the
 2 cost of the action. If this election is made, the insurer
 3 waives 50% of its subrogation rights granted by this
 4 section.

5 (d) If the injured employee or the employee's personal
 6 representative institutes the action, the employee is
 7 entitled to at least one-third of the amount recovered by
 8 judgment or settlement less a proportionate share of
 9 reasonable costs, including attorneys' fees, if the amount
 10 of recovery is insufficient to provide the employee with
 11 that amount after payment of subrogation.

12 (3) If an injured employee refuses or fails to
 13 institute the third party action within 1 year from the date
 14 of injury, the insurer may institute the action in the name
 15 of the employee and for the employee's benefit or that of
 16 the employee's personal representative. If the insurer
 17 institutes the action, it shall pay to the employee any
 18 amount received by judgment or settlement which is in excess
 19 of the amounts paid or to be paid under the Workers'
 20 Compensation Act after the insurer's reasonable costs,
 21 including attorneys' fees for prosecuting the action, have
 22 been deducted from the recovery.

23 (4) An insurer may enter into compromise agreements in
 24 settlement of subrogation rights.

25 (5) ~~if the amount of compensation and other benefits~~

payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the department shall determine what proportion of the settlement shall be allocated under subrogation. The department's determination may be appealed to the workers' compensation judge. Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation and may not be reopened by the department.

(6) (a) The insurer is entitled to full subrogation rights under this section, even though the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative, without regard to the nature of the damages.

(b) If no survival action exists and the parties reach

a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement."

Section 5. Section 39-71-431, MCA, is amended to read:

"39-71-431. Assigned risk plan. (1) Following the date on which the provisions of 39-71-2311 through 39-71-2320, and 39-71-2337, ~~and 39-71-2338~~ are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

Section 6. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or

dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. ~~Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the~~

~~form-and-at-the-times-required-by-the-department-~~ The department may require insurers to submit information to be used in establishing the schedule. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) (a) Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the ~~maximum-fees~~ reimbursement for medical services payable by insurers must be limited to the relative value fee schedule established in January 1987.

(b) Reimbursement for medical services by insurers for calendar year 1992 may not increase more than the percentage increase in the state's average weekly wage since July 1, 1987.

(c) Beginning January 1, 1993, the maximum

reimbursement for medical services by insurers may not be increased more than the annual percentage increase in the state's weekly wage:

(5) (a) Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988.

(b) Hospital rates payable by insurers for calendar year 1992 may not increase more than the percentage increase in the state's average weekly wage since July 1, 1987.

(c) Beginning January 1, 1993, the maximum hospital rates payable by insurers may not be increased more than the annual percentage increase in the state's average weekly wage."

Section 7. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements, lump-sum payments, and lump-sum advance payments. (1) The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. A conversion may be made only upon written application by the injured worker with the concurrence of the insurer. An agreement between a claimant and insurer for partial or full conversion of benefits is subject to department approval. The approval or award of a lump-sum payment by the department is the exception and not the rule.

1 ~~{i}~~(2) (a) Benefits may be converted in whole to a lump
 2 sum:
 3 ~~{i}~~ if a claimant and an insurer dispute the initial
 4 compensability of an injury; and
 5 ~~{ii}~~ if the claimant and insurer agree to a settlement.
 6 (b) ~~The agreement is subject to department approval.~~
 7 The department may disapprove an agreement under this
 8 section subsection (2) only if there is not a reasonable
 9 dispute over compensability.
 10 (c) Upon approval, the agreement constitutes a
 11 compromise and release settlement and may not be reopened by
 12 the department or by any court.
 13 ~~{d}--The parties' failure to reach an agreement is not a~~
 14 ~~dispute over which a mediator or the workers' compensation~~
 15 ~~court has jurisdiction.~~
 16 {2}(3) (a) If an insurer has accepted initial liability
 17 for an injury, permanent total and permanent partial wage
 18 supplement benefits may be converted in whole to a lump-sum
 19 payment. A lump-sum conversion may not be greater than the
 20 present value of the estimated future benefits using the
 21 rate prescribed in subsection (7).
 22 (b) ~~The conversion may be made only upon agreement~~
 23 ~~between a claimant and an insurer.~~
 24 ~~{e}~~ The agreement is subject to department approval.
 25 The department may ~~approve an agreement if~~ disapprove an

1 agreement under this subsection (3) only if it determines
 2 that the settlement amount is inadequate. If the agreement
 3 is disapproved, the department must set forth in detail the
 4 reasons for the disapproval.
 5 ~~{i}--there is a reasonable dispute concerning the amount~~
 6 ~~of the insurer's future liability or benefits; or~~
 7 ~~{ii} the amount of the insurer's projected liability is~~
 8 ~~reasonably certain and the settlement amount is not~~
 9 ~~substantially less than the present value of the insurer's~~
 10 ~~liability.~~
 11 ~~{d}--The parties' failure to reach agreement is not a~~
 12 ~~dispute over which a mediator or the workers' compensation~~
 13 ~~court has jurisdiction.~~
 14 ~~{e}(c)~~ Upon approval, the agreement constitutes a
 15 compromise and release settlement and may not be reopened by
 16 the department or by any court.
 17 (4) (a) If an insurer has accepted initial liability
 18 for an injury, permanent total wage supplement benefits may
 19 be converted in whole to a lump-sum payment. A lump-sum
 20 conversion may not be greater than the present value of the
 21 estimated future benefits using the rate prescribed in
 22 subsection (7).
 23 (b) The department may approve an agreement under this
 24 subsection if the parties demonstrate that the claimant has
 25 financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria established by the department; and

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(c) A lump sum conversion may not be given for the purpose of purchasing an annuity or investing in real estate for business purposes or for any type of passive investment.

(d) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

~~{3}(5)~~ (a) Permanent partial wage supplement benefits may be converted in part to a lump-sum advance.

~~{b}--The-conversion-may-be-made-only-upon-agreement between-a-claimant-and-an-insurer-~~

~~{c} The-agreement-is-subject-to-department-approval-~~

(b) The department may approve an agreement under this section if the parties demonstrate that the claimant has financial need that:

(i) relates to the necessities of life or relates to an accumulation of debt incurred prior to injury; and

(ii) arises subsequent to the date of injury or arises

because of reduced income as a result of the injury.

~~{d}--The-parties'-failure-to-reach-an-agreement-is-not-a dispute-over-when-a-mediator-or-the-workers'-compensation court-has-jurisdiction-~~

~~{4}(6)~~ Permanent total disability benefits may be converted in part to a lump-sum advance. The total of all lump-sum advance payments to a claimant may not exceed \$20,000. ~~A-conversion-may-be-made-only-upon-the-written application-of-the-injured-worker-with-the-concurrence-of the-insurer-Approval-of-the-lump-sum-advance-payment-rests in-the-discretion-of-the-department-The-approval-or-award of-a-lump-sum-advance-payment-by-the-department-or-court must-be-the-exception-~~ it may be given The department may approve an agreement under this subsection only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture as-set-forth-in 39-71-1926 that is considered feasible under criteria established by the department; and

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

~~{5}(7)~~ (a) An insurer may recoup any lump-sum advance

1 amortized at the rate established by the department,
2 prorated biweekly over the projected duration of the
3 compensation period.

4 (b) The rate adopted by the department must be based on
5 the average rate for United States 10-year treasury bills in
6 the previous calendar year, rounded to the nearest whole
7 number.

8 (c) If the projected compensation period is the
9 claimant's lifetime, the life expectancy must be determined
10 by using the most recent table of life expectancy as
11 published by the United States national center for health
12 statistics.

13 ~~(67)(8) For Subject to other provisions of this section,~~
14 ~~the~~ department has full power, authority, and jurisdiction
15 to allow, approve, or condition compromise settlements or
16 lump-sum advances agreed to by workers and insurers. All
17 such compromise settlements and lump-sum payments are void
18 without the approval of the department. Approval by the
19 department must be in writing. The department shall directly
20 notify a claimant of a department order approving or denying
21 a claimant's compromise or lump-sum payment.

22 ~~(77)(9) Subject to 39-71-2401, a dispute between a~~
23 ~~claimant and an insurer regarding the conversion of biweekly~~
24 ~~payments into a lump-sum-advance-under-subsection-(44) lump~~
25 ~~sum~~ is considered a dispute, for which a mediator and the

1 workers' compensation court have jurisdiction to make a
2 determination. If an insurer and a claimant agree to a
3 compromise and release settlement or a lump-sum advance but
4 the department disapproves the agreement, the parties may
5 request the workers' compensation court to review the
6 department's decision."

7 **Section 8.** Section 39-71-2311, MCA, is amended to read:

8 "39-71-2311. Intent and purpose of plan. It is the
9 intent and purpose of the state fund to allow employers the
10 option to insure their liability for workers' compensation
11 and occupational disease coverage with a mutual insurance
12 fund. The state fund is required to insure any employer in
13 this state requesting coverage, and it may not refuse
14 coverage for an employer unless an assigned risk plan
15 established under 39-71-431 is in effect. The state fund
16 must be neither more nor less than self-supporting. Premium
17 rates must be set at least annually at a level sufficient to
18 ensure the adequate funding of the insurance program
19 including the costs of administration, benefits, and
20 adequate reserves, during and at the end of the period for
21 which the rates will be in effect. In determining premium
22 rates, the state fund shall make every effort to adequately
23 predict future costs. When the costs of a factor influencing
24 rates are unclear and difficult to predict, the state fund
25 shall use a prediction calculated to be more than likely to

cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. An employer's payroll reporting and premium history and other relevant factors may also be considered in implementing variable pricing levels."

Section 9. Section 39-71-2339, MCA, is amended to read:

"39-71-2339. Cancellation of coverage -- thirty days' notice required. The state fund may cancel an employer's ~~right--to--operate--under--plan--No--3--of--the--Workers'~~ Compensation--Act coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. When--the--state--fund ~~cancels-an-employer's-coverage,-it-shall-notify-the-employer~~ of-its-intent-to-cancel-the-employer-at-least-30-days-before ~~the-cancellation-becomes-effective.~~ Cancellation may take effect only by written notice to the named insured at least 30 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by

failure of the employer to submit payroll reports or pay a premium within 30 days after the due date. The state fund shall notify the department of the names and effective dates of all policies cancelled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued."

Section 10. Section 39-72-601, MCA, is amended to read:

"39-72-601. Medical panel. (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by his specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department or an insurer shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, one member of the panel to be the chairman."

Section 11. Section 39-72-602, MCA, is amended to read:

"39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, or questions liability or in order to determine whether the claimant is totally disabled or to what extent, if any, benefits must be reduced pursuant to 39-72-706, the following procedure must be followed:

(a) The department or an insurer with notice to the department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department or an insurer with notice to the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the

claimant is totally disabled and is suffering from an occupational disease and to what extent, if any, benefits must be reduced pursuant to 39-72-706. The panel member shall submit a report of his findings to the department. When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the department shall issue its order based on the report of the three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant,

1 the panel chairman shall appoint another member of the
2 medical panel to be the third member."

3 NEW SECTION. **Section 12.** Repealer. Section 39-71-2338,
4 MCA, is repealed.

5 NEW SECTION. **Section 13.** Effective date. [This act] is
6 effective July 1, 1991.

-End-

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Tom Towe, Vice Chairman, on February 21, 1991, at 3:20 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 379

Presentation and Opening Statement by Sponsor:

Senator Lynch made the opening statement for sponsor Senator Fred Van Valkenburg. Senator Lynch told the Committee Senate Bill 379 would give probation/parole officers peace officer status.

Proponents' Testimony:

Terry Minow of the Montana Federation of State Employees spoke in support of Senate Bill 379 from prepared testimony. (Exhibit #1)

Senator Tom Keating read a statement of support from Judge Pedro Hernandez of the Yellowstone County Justice Court. (Exhibit #2)

Senator Fred Van Valkenburg told the Committee as a deputy county attorney and as a public defender in Missoula County he has had a close association with adult probation and parole

Senator Aklestad commented Ms. Willis indicated there were different benefits under peace officer status. Ms. Willis explained two benefits. One would be death benefits in the event of death on the job, and their "career ladder" would be enhanced.

Senator Aklestad asked Mr. Russell, above the costs of training and time away from the job, what the cost of such benefits would be. Mr. Russell explained there are two benefits not afforded probation/parole officers. The federal government has a \$150,000 death benefit for those who die in the line of service where probation/parole officers are included. He explained legislation is being heard to provide a similar benefit in Montana which did not include probation/parole officers. He told the Committee the sponsor was approached to include probation/parole officers, but the idea "did not get a good reception".

Senator Blaylock asked Terry Minow about the additional cost of \$42,000 of workers' compensation. Ms. Minow told the Committee she could not address that.

Senator Keating asked why there was not a fiscal note with Senate Bill 379. Senator Van Valkenburg commented the legislative council identifies bills in which fiscal notes may be required. He explained he had been under the impression Mr. Russell was working on a fiscal note, but may have misinterpreted his (Mr. Russell's) comments. He told the Committee although the bill was not out until Tuesday, he believes Mr. Russell was aware of it because of the drafting request.

Closing by Sponsor:

Senator Van Valkenburg closed on Senate Bill 379. Senator Blaylock urged both sides to meet with Tom Gomez, legislative council. Mr. Gomez is willing to assist both sides regarding technical discrepancies.

HEARING ON SENATE BILL 383

Presentation and Opening Statement by Sponsor:

Senator Cecil Weeding told the Committee Senate Bill 383 was introduced at the request of the state fund. He explained the request deals with clarification in the statutes. He asked Section 6 and Section 7 be struck as they are being addressed in House Bill 837. Senator Weeding proposed amendments.

Proponents' Testimony:

Pat Sweeney of the state fund spoke in support of Senate Bill 383. He requested Section 10 and 11 be stricken. He explained what they had felt was a statutory problem is being handled internally. He told the Committee changes in Section 1,

2, and 3 attempt to clarify and identify employers responsible for workers' compensation coverage; but does not expand coverage requirements under existing law. Section 4 clarifies the statute in response to a court decision. The insurer and claimant will determine the disposition of the settlement, when they agree, without department determination. The current statute requires the department to determine disposition even when parties have no dispute. The issues in Section 6 are addressed in House Bill 837 and House Bill 465. In Section 8 the state fund's role is clarified in implementing variable pricing as required by existing statute. He commented Section 9 and 12 are provisions intended to clarify provisions for cancellation of coverage under Plan 3.

Bob Jensen, an Administrator in the Montana Department of Labor and Industry spoke in support of Senate Bill 383 as amended.

Curt Lyman, Safety Director of the Montana Motor Carriers Association spoke from prepared testimony in support of Senate Bill 383. (Exhibit #5)

Opponents' Testimony:

NONE.

The Montana Hospital Association opposition to Senate Bill 383 was in reference to Section 6 which has been stricken. (Exhibit #6)

Questions From Committee Members:

NONE.

Closing by Sponsor:

Senator Weeding closed on Senate Bill 383.

HEARING ON SENATE BILL 403

Presentation and Opening Statement by Sponsor:

Senator Larry Stimatz presented written testimony in support of Senate Bill 403 from Dave Orendorff, pastor of St. Paul's United Methodist Church. (Exhibit #7)

Senator Stimatz explained Senate Bill 403 would repeal Montana's existing child labor law which is "poor, almost non-existent".

Proponents' Testimony:

Father Jerry Lowney, Associate Pastor of St. Helena's

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2/21

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		

Each day attach to minutes.

Amendments to Senate Bill No. 383
First Reading Copy

Requested by Sen. Weeding
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
February 18, 1991

1. Title, line 8.
Following: "39-71-431,"
Strike: "39-71-704, 39-71-741,"
2. Page 7, lines 5, 14, and 20.
Strike: "temporary"
3. Page 15, line 18 through page 24, line 6
Strike: sections 6 and 7 in their entirety
Renumber: subsequent sections

2/21/91

Curt Laingen

SB 383

Montana Motor Carriers Association

Mr. Chairman, members of the committee, for the record my name is Curt Laingen, Director of Safety for the Montana Motor Carriers Association. I am before you today to speak in support of Senate Bill 383.

Having owned and operated trucks for a number of years as well as making payroll for employees, I have always believed that the day I would support a Workers Compensation/State Fund bill would be a cold day in Helena. It isn't a cold day, and I and the Montana Motor Carriers Association believe this is a good bill.

An ongoing problem Montana truckers and carriers have faced for many years dealing with Work Comp has been a lack of clear definition in State Statute. In other words, who exactly must be covered by Work. Comp., who must provide coverage, and what type of coverage must be provided. This bill, SB 383, clarifies those answers in Section 2 Paragraph 4.

That language will serve as an aid to our Association as it endeavors to counsel our members in their concern for compliance with state law. The Montana trucking industry desires clear and concise rules as well as a fair and uniform regulation; HB 383 is a means to that goal.

I strongly urge DO PASS for HB 383.

Thank You.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 2/21/91
BILL NO. SB 383



MONTANA HOSPITAL ASSOCIATION

10 NINTH AVE.
P.O. BOX 5119
HELENA, MT
59604
(406) 442-1911
FAX 443-3894

Testimony of the Montana Hospital Association Senate Bill 383

The Montana Hospital Association opposes Senate Bill 383. We do so because Section 6 of the bill (on page 18) unfairly limits hospital rates. Limiting increases in hospital rates to the percentage increase in the state's average weekly wage is arbitrary and capricious.

OFFICERS

Chairman
John Solheim
Glendive

Chairman-Elect
John A. Guy
Helena

Immediate
Past Chairman
William J.
Downer, Jr.
Great Falls

Treasurer
Grant Winn
Missoula

President
James F. Ahrens
Helena

TRUSTEES

Madelyn Faller
Superior

Gerald Bibb
Havre

Kyle Hopstad
Glasgow

Gary Kenner
Bozeman

Tim Russell
Columbus

William T. Tash
Dillon

James Paquette
Billings

Lane Basso
Billings

Lawrence White
Missoula

Hospitals in Montana have borne a disproportionate share of the burden in resolving the Workers' Compensation funding problem. Hospital rates have been frozen since 1988 and are currently discounted by as much as 33 percent. Montana's rural hospitals simply cannot afford to indefinitely subsidize the state insurance fund.

At the same time Montana underpays its own hospitals, hospitals located outside of Montana are paid full charges.

Discounts required by Workers' Compensation are made up by other insurers and people who pay their expenses out of their own pocket. Hospitals unable to raise money from other payors must utilize capital reserves or increase county tax subsidies.

Workers' Compensation is creating a hidden tax on employers and other Montanans by not paying their fair share of health care costs.

At the same time hospital payment rates have been frozen the cost of workers' compensation insurance has risen by 57 percent. During a two year period since hospital rates have been frozen the state has collected \$530 thousand in excess insurance premiums from hospitals. (Source: State Mutual Compensation Insurance Fund: Class Code Experience Inquiry 3/07/90)

MHA has worked cooperatively with the State to develop a reasonable hospital rate plan. This cooperative spirit between the state and the private sector will be greatly impaired by the passage of Senate Bill 383.

MHA urges this committee to delete the amendments to section 6 of Senate Bill 383.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 6

DATE 2/21/91

BILL NO. SB 383

DATE

2/21/91

COMMITTEE ON

Senate Labor

Hearing: SB 379-383-403-406-420-447

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Mary Kay Jay	MT Fed of Prob & Parole	379	✓	
John E. "Bobo" Kelly	Probation/Parole Off. III	379	✓	
Sean R. Lyle	Probation & Parole Off. III	379	✓	
Debbie Willis	Probation/Parole Off. III	379	✓	
Terry Miron	MFS E	379	✓	
BEN EVERETT	Self	406		✓
Don Edwards	OCALW	383	X	
Don Edwards	OCALW	403	X	
Don Edwards	OCALW	406		X
Don Edwards	OCALW	420	X as amended	X
Fr. Jerry Lawrence	St. Helena (Orthodox) + Sisters (Catholic)	403	✓	
Bob Heiser	UFCW	420	X as amended	X
Don Judge	MT STATE AFL-CIO	SB 403	X	
" "	" " "	SB 420 SB 406		X
Dave Orendorff	St. Paul's United Methodist	SB 403	X	
Bob Heiser	UFCW	403	X	
Bob Jensen	Unif. of Labor	383	X	
Gail Jay	OPD	403	✓	
JAY REIDEN	USWA LOCAL 72	SB 420 SB 406		X
Norm Grosfield	Attorney	406		X
CURT LAINGEN	MT Motor Carrier's Assn	383	✓	
PAT Sweeney	STATE FUND	383	✓	
" "	" "	406	✓	
Robert Olson	MT Hospital Assn.	383		X
Chuck West	MNA	403		X
Pickie Orendorff		403	✓	

DATE 2/21/91 (cont'd)

Senate Labor

VISITORS' REGISTER

[illegible]

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chairman, on
February 23, 1991, at 8:05 a.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: Senator Towe announced the appointment
of Senator Steve Doherty as a full voting member of the
Committee during Senator Manning's absence.

EXECUTIVE ACTION ON SENATE BILL 379

Motion:

Senator Blaylock moved the amendments (SB037901.ATG).

Senator Blaylock moved Senate Bill 379 DO PASS as amended.

Discussion:

Tom Gomez explained amendments (SB037901.ATG).

Senator Blaylock asked Mr. Gomez if Senator Van Valkenburg
has seen the amendments. Mr. Gomez told the Committee Senator

amended.

Discussion:

Senator Towe told the Committee he opposes Senate Bill 406. He commented the department is attempting to reverse a decision of the Supreme Court. He explained the department should not go to the Legislature when it receives an adverse decision.

Senator Aklestad told the Committee Workers' Compensation will move to increase premiums. He explained due to cases pending in the courts there could be another significant impact on the fund.

Senator Towe commented this addresses the latent injury which does not or cannot appear within the time frame set forth.

Amendments, Discussion, and Votes:

Aklestad motion to amend CARRIED UNANIMOUSLY.

Recommendation and Vote:

Roll Call Vote on Aklestad DO PASS as amended motion FAILED with four (4) YES (Aklestad, Devlin, Keating and, Nathe); and six (6) NO (Blaylock, Doherty, Lynch, Manning, Pipinich, and Towe).

Vote on Blaylock motion to DO NOT PASS as amended CARRIED with six (6) YES (Blaylock, Doherty, Lynch, Manning, Pipinich, Towe); and four (4) NO (Aklestad, Devlin, Keating, and Nathe).

EXECUTIVE ACTION ON SENATE BILL 383

Senator Blaylock moved amendments to Senate Bill 383.
(SB038301.ATG)

Senator Blaylock moved Senate Bill 383 DO PASS as amended.

Motion:

Tom Gomez explained amendments to Senate Bill 383.

Recommendation and Vote:

Blaylock motion to amend CARRIED UNANIMOUSLY.

Blaylock motion to DO PASS as amended CARRIED UNANIMOUSLY.

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2/23/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

Amendments to Senate Bill No. 383
First Reading Copy

Requested by Senator Cecil Weeding
For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez
February 22, 1991

1. Title, line 8.

Following: "39-71-431,"

Strike: "39-71-704, 39-71-741,"

Following: "39-71-2311,"

Insert: "AND"

2. Title, line 9.

Strike: "39-72-601, AND 39-72-602,"

3. Page 7, lines 5, 14, and 20.

Strike: "temporary"

4. Page 15, line 18 through page 24, line 6.

Strike: sections 6 and 7 in their entirety

Renumber: subsequent sections

5. Page 26, line 13 through page 29, line 2.

Strike: sections 10 and 11 in their entirety

Renumber: subsequent sections

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 383 (first reading copy -- white), respectfully report that Senate Bill No. 383 be amended and as so amended do pass:

1. Title, line 8.

Following: "39-71-431,"

Strike: "39-71-704, 39-71-741,"

Following: "39-71-2311,"

Insert: "AND"

2. Title, line 9.

Strike: "39-72-601, AND 39-72-602,"

3. Page 7, lines 5, 14, and 20.

Strike: "temporary"

4. Page 15, line 18 through page 24, line 6.

Strike: sections 6 and 7 in their entirety

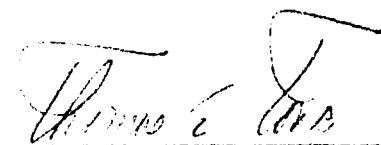
Renumber: subsequent sections

5. Page 26, line 13 through page 29, line 2.

Strike: sections 10 and 11 in their entirety

Renumber: subsequent sections

BEST COPY
AVAILABLE

Signed: 

Thomas E. Towe, Vice Chairman

1991-2-23-9
And. Coord.

Sec. of Senate

421112SC.Sj1

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES on March 13, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
Royal Johnson (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Members Absent:

David Hoffman (R)
Thomas Lee (R)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 420

Presentation and Opening Statement by Sponsor:

SEN. PAUL SVRCEK, Senate District 26, Thompson Falls, said SB 420 revises a law passed last session which set up a system of deductibles in Workers' Compensation. It was set up to be totally discretionary. The suggestions of the National Commission on Compensation Insurance (NCCI) have to be followed. Since NCCI said there wouldn't be significant savings with the system, there hasn't been much interest in the deductible. It was estimated that \$7 or \$8 million would be saved per year in the Workers' Compensation system if it was enacted. When the bill

The potential insured can then choose to insure with a company that does or doesn't offer a deductible or the State Fund. She stated her support of the bill with the amendment.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. SVRCEK said if the deductible was optional for the private insurers, in essence they aren't going to do it. Perhaps there could be an exception if private insurers could show that they aren't structured to offer this type of deductible. Rep. O'Keefe will carry the bill.

HEARING ON SB 383

Presentation and Opening Statement by Sponsor:

SEN. CECIL WEEDING, Senate District 14, Jordan, said SB 383 is introduced at the request of the State Fund. The requested changes clarify the statutes. Sections 6 and 7 have been struck from the bill because they were dealt with in another bill. Sections 1-3 attempt to clarify and identify the proper employer for coverage purposes in leasing arrangements and in the trucking industry. Leasing arrangements are a nationwide Workers' Compensation problem, and the difficulty is determining the proper employer for coverage purposes so adequate premiums can be collected to pay the benefits. This bill sets forth criteria to determine which employer should provide coverage. Section 4 allows the insurer and a claimant to agree on the disposition of a third-party settlement when satisfying the insurer's subrogation interests. Section 6 allows the State Fund to consider the employer's premium history as well as the employer's safety record in determining the variable pricing level for the insured. Section 7 clears up a conflict in the statute for the cancellation notice. The statute requires both a 20-day and a 30-day notice. The bill deletes the 20-day notice and uses the 30-day notice, which is what the State Fund is presently doing. Sections 10 and 11 have been struck at the request of the State Fund.

Proponents' Testimony:

Pat Sweeney, State Fund, said the changes in Sections 1-3 attempt to clarify and identify the employers responsible for providing Workers' Compensation coverage. This does not expand the coverage requirements under the existing law. The first issue deals with leasing companies. The changes continue to allow businesses who furnish temporary employees to other employers to provide the required Workers' Compensation coverage, but the changes define a temporary service contractor and temporary worker. Section 2 requires coverage by the using

employer if the workers are furnished by a business who does not meet the definition of temporary service contractor. The second issue deals with coverage requirements for motor carriers. The bill does not expand coverage but attempts to identify the employer responsible. Section 2, Paragraph 4, requires the motor carrier doing business in Montana, who utilizes Montana employees, to provide Montana coverage. The bill allows two exceptions: 1. if the driver is certified as an independent contractor, which is the same as existing law; 2. if the employer or leasing firm furnishing the drivers to the motor carrier provides Montana coverage. This provision has been discussed with and agreed to by the Montana Motor Carriers' Association. Section 3 clarifies the definition of employee so it ties to the coverage change discussed previously. Section 4 clarifies the statute in response to a Supreme Court decision. The bill allows the insurer and claimant to determine the disposition of a settlement as it relates to subrogation when they agree without a Department determination. The current statute and Supreme Court decision require the Department to determine the disposition even though the parties had no dispute. The language is identical to HB 837 and to the best of his knowledge all parties agree. Section 6 is amended to clarify the State Fund's role in implementing variable pricing as required by existing statutes. The bill clarifies that an employer's payroll reporting and premium payment history as well as other relevant factors may be considered in implementing variable pricing levels. Section 7 clarifies the provisions for cancellation of coverage under Plan 3 of the Workers' Compensation Act. The current provisions are in conflict where one section requires a 20-day notice and another section requires a 30-day notice. The bill amends Section 23-39 which requires a 30 day notice, incorporates the appropriate parts under Section 23-38 and repeals Section 23-38.

Mike Sherwood, Montana Trial Lawyers' Association, stated his support of the bill as amended.

Don Judge, Executive Secretary, AFL-CIO, said the bill addresses a concern regarding specific employment contractors and how they were paying their Workers' Compensation premiums when those contractors were, in fact, providing full-time workers in certain industries. Under HB 420, the rate that is charged to a particular industry is based upon the industry rate and not the rate that an overall employment contractor would apply, unless it was similar to Kelly Girls, in which it would be a temporary position.

Bob Heiser, United Food and Commercial Workers' Union, stated his support.

Curt Laingen, Motor Carriers Association, stated his support.

Jacqueline Terrell, American Insurance Association, stated her support.

Bob Jensen, Administrator, Department of Labor and Industry, stated his support.

Opponents' Testimony: None

Questions From Committee Members:

REP. DRISCOLL said the Senate struck Section 6 completely so that Section stays in the law. Page 19, Line 6, says the settlements are subject to Department approval. Since it is struck and is now back in the law, people will have to beg the Department to get settlements again. Ms. McClure said the Senate struck that Section because it has been dealt with in SB 465 and HB 837. REP. DRISCOLL asked what would happen if those bills don't pass. Ms. McClure said the Section could be amended to conform with SB 465 and HB 837, or the entire Section could be struck and the other bills could be used.

REP. THOMAS asked Mr. Sweeney to explain the cancellation process in Section 7. Mr. Sweeney said nonpayment of premium or non-reporting of payroll can start the cancellation process. The State Fund has been using a 30-day cancellation notice. It was in conflict in the law, and this bill clarifies it. REP. THOMAS asked if the State Fund would initiate the 30-day notice if a payroll report is not received. Mr. Sweeney said yes. REP. THOMAS asked if the State Fund received a payroll report from an employer but the premium wasn't paid by a certain date, would the State Fund initiate the 30-day notice. Mr. Sweeney said yes.

REP. DRISCOLL said 39-71-431 pertains to the assigned risk plan. If it is not implemented by December 31, 1990, the Commissioner cannot do it ever. Why is it needed in the law book? Mr. Murphy said Section 5 is in the bill because Page 14, Line 9, says Section 23-38 is repealed. That is the only change in this Section. It probably isn't needed now. There was no intent to deal with the assigned risk plan. That is the Department's problem.

REP. THOMAS asked Ms. McClure if Section 5, Page 14, Line 10, will stay in statute since it has not been enacted as of December 31, 1990, or will it have to be repealed. Ms. McClure said it will have to be repealed.

Closing by Sponsor:

SEN. WEEDING closed. Rep. Wanzenried will carry the bill.

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 3/13/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN		✓	
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE		✓	
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 383

DATE 3/13/91

SPONSOR(S) Sen. Cecil Weeding

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bob Heiser	UFCW	X	
Bob Jensen	Dept of Labor & Ind	X	
CURT LAINGEN	MONTANA MOTOR CARRIER'S ASSN	X	
Pat Swenson	STATE FUND	✓	
Jacqueline Merrill	Am. Bus. Assoc.	✓	
Michael J. Sherwood	MTLA	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES on March 15, 1991, at
3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
Royal Johnson (R)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Members Excused:

Mark O'Keefe (D)

Members Absent:

David Hoffman (R)
Thomas Lee (R)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON SB 349

Presentation and Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 4, Kalispell, said he was representing the injured worker. SB 349 is an act to regulate attorney fees in Workers' Compensation matters; providing for regulation of attorney fees by the Department of Labor. The bill deals with the defense side and the claimant's side. The dollar amount is \$90 per hour. There was concern from the opponents that access to attorneys for low-income people was being limited.

Discussion:

REP. FAGG said the amendments include unions in the bill, so neither employers nor unions can use these "goons." Sen. Towe and Rep. Driscoll agreed to the amendments.

Vote: SB 267 AMENDMENTS. Motion carried 17 to 1 with Rep. Whalen voting no.

Motion/Vote: REP. PAVLOVICH MOVED SB 267 BE CONCURRED IN AS AMENDED. Motion carried 12 to 6 with Reps. Benedict, Hanson, Hoffman, Johnson, Lee, and Thomas voting no.

REP. WHALEN will carry SB 267.

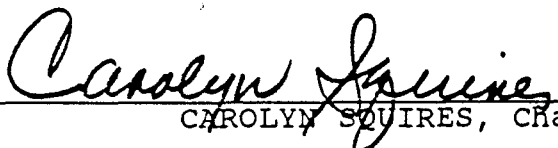
EXECUTIVE ACTION ON SB 383

Motion/Vote: REP. WANZENRIED MOVED SB 383 BE CONCURRED IN. Motion carried unanimously.

REP. WANZENRIED will carry SB 383.

ADJOURNMENT

Adjournment: 5:10 p.m.


CAROLYN SQUIRES, Chair


JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 3/15/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE			✓
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN		✓	
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE		✓	
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

March 13, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 383 (third reading copy -- blue) be concurred in.

Signed: _____
Carolyn Squires, Chairman

Carried by: Rep. Wansenried

1 SENATE BILL NO. 383

2 INTRODUCED BY WEEDING, WILLIAMS

3 BY REQUEST OF THE STATE FUND

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE CERTAIN
6 PROVISIONS OF THE WORKERS' COMPENSATION ACT; AMENDING
7 SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-414,
8 39-71-431, 39-71-704, 39-71-741, 39-71-2311, AND 39-71-2339,
9 39-72-601, AND 39-72-602, MCA; AND REPEALING SECTION
10 39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13 **Section 1.** Section 39-71-116, MCA, is amended to read:14 "39-71-116. Definitions. Unless the context otherwise
15 requires, words and phrases employed in this chapter have
16 the following meanings:

17 (1) "Administer and pay" includes all actions by the
18 state fund under the Workers' Compensation Act and the
19 Occupational Disease Act of Montana necessary to the
20 investigation, review, and settlement of claims; payment of
21 benefits; setting of reserves; furnishing of services and
22 facilities; and utilization of actuarial, audit, accounting,
23 vocational rehabilitation, and legal services.

24 (2) "Average weekly wage" means the mean weekly
25 earnings of all employees under covered employment, as

1 defined and established annually by the Montana department
2 of labor and industry. It is established at the nearest
3 whole dollar number and must be adopted by the department
4 prior to July 1 of each year.

5 (3) "Beneficiary" means:

6 (a) a surviving spouse living with or legally entitled
7 to be supported by the deceased at the time of injury;

8 (b) an unmarried child under the age of 18 years;

9 (c) an unmarried child under the age of 22 years who is
10 a full-time student in an accredited school or is enrolled
11 in an accredited apprenticeship program;

12 (d) an invalid child over the age of 18 years who is
13 dependent upon the decedent for support at the time of
14 injury;

15 (e) a parent who is dependent upon the decedent for
16 support at the time of the injury (however, such a parent is
17 a beneficiary only when no beneficiary, as defined in
18 subsections (3)(a) through (3)(d) of this section, exists);
19 and

20 (f) a brother or sister under the age of 18 years if
21 dependent upon the decedent for support at the time of the
22 injury (however, such a brother or sister is a beneficiary
23 only until the age of 18 years and only when no beneficiary,
24 as defined in subsections (3)(a) through (3)(e) of this
25 section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Days" means calendar days, unless otherwise specified.

(7) "Department" means the department of labor and industry.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(13) "Payroll", "annual payroll", or "annual payroll for

the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~†2†~~(22) "Temporary total disability" means a condition

resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(23) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~†22†~~(24) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

~~†1†~~(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

~~†2†~~(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to

operate as self-insured under plan No. 1 of this chapter.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a temporary worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a temporary worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a temporary worker to another has obtained workers' compensation insurance in Montana both at the inception of employment and during all phases of the work performed for the worker.

(4) Notwithstanding the provisions of subsection (3), a common or contract motor carrier doing business in this

state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 3. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by

1 the provisions of the compensation law for these casual
2 employments, as provided in 39-71-401(2). Household or
3 domestic service is excluded.

4 (b) a recipient of general relief who is performing
5 work for a county of this state under the provisions of
6 53-3-303 through 53-3-305 and any juvenile performing work
7 under authorization of a district court judge in a
8 delinquency prevention or rehabilitation program;

9 (c) a person receiving on-the-job vocational
10 rehabilitation training or other on-the-job training under a
11 state or federal vocational training program, whether or not
12 under an appointment or contract of hire with an employer as
13 defined in this chapter and whether or not receiving payment
14 from a third party. However, this subsection does not apply
15 to students enrolled in vocational training programs as
16 outlined above while they are on the premises of a public
17 school or community college.

18 (d) students enrolled and in attendance in programs of
19 vocational-technical education at designated
20 vocational-technical centers; or

21 (e) an airman or other person employed as a volunteer
22 under 67-2-105.

23 (2) (a) If the employer is a partnership or sole
24 proprietorship, such employer may elect to include as an
25 employee within the provisions of this chapter any member of

1 such partnership or the owner of the sole proprietorship
2 devoting full time to the partnership or proprietorship
3 business.

4 (b) In the event of such election, the employer must
5 serve upon the employer's insurer written notice naming the
6 partners or sole proprietor to be covered and stating the
7 level of compensation coverage desired by electing the
8 amount of wages to be reported, subject to the limitations
9 in subsection (2)(d). A partner or sole proprietor is not
10 considered an employee within this chapter until such notice
11 has been given.

12 (c) A change in elected wages must be in writing and is
13 effective at the start of the next quarter following
14 notification.

15 (d) All weekly compensation benefits must be based on
16 the amount of elected wages, subject to the minimum and
17 maximum limitations of this subsection. For premium
18 ratemaking and for the determination of weekly wage for
19 weekly compensation benefits, the electing employer may
20 elect not less than \$900 a month and not more than 1 1/2
21 times the average weekly wage as defined in this chapter.

22 (3) An employee, workman, or worker in this state whose
23 services are furnished by a person, association, contractor,
24 firm, or corporation, other than a temporary service
25 contractor, to an employer as defined in section 39-71-117

1 is presumed to be under the control and employment of the
 2 employer. This presumption may be rebutted as provided in
 3 39-71-117(4).

4 (4) For purposes of this section, an "employee,
 5 workman, or worker in this state" means:

6 (a) a resident of Montana who is employed by an
 7 employer and whose employment duties are primarily carried
 8 out or controlled within this state; or

9 (b) a nonresident of Montana whose principal employment
 10 duties are conducted within this state on a regular basis
 11 for an employer."

12 **Section 4.** Section 39-71-414, MCA, is amended to read:

13 **"39-71-414. Subrogation.** (1) If an action is prosecuted
 14 as provided for in 39-71-412 or 39-71-413 and except as
 15 otherwise provided in this section, the insurer is entitled
 16 to subrogation for all compensation and benefits paid or to
 17 be paid under the Workers' Compensation Act. The insurer's
 18 right of subrogation is a first lien on the claim, judgment,
 19 or recovery.

20 (2) (a) If the injured employee intends to institute
 21 the third party action, he shall give the insurer reasonable
 22 notice of his intention to institute the action.

23 (b) The injured employee may request that the insurer
 24 pay a proportionate share of the reasonable cost of the
 25 action, including attorneys' fees.

1 (c) The insurer may elect not to participate in the
 2 cost of the action. If this election is made, the insurer
 3 waives 50% of its subrogation rights granted by this
 4 section.

5 (d) If the injured employee or the employee's personal
 6 representative institutes the action, the employee is
 7 entitled to at least one-third of the amount recovered by
 8 judgment or settlement less a proportionate share of
 9 reasonable costs, including attorneys' fees, if the amount
 10 of recovery is insufficient to provide the employee with
 11 that amount after payment of subrogation.

12 (3) If an injured employee refuses or fails to
 13 institute the third party action within 1 year from the date
 14 of injury, the insurer may institute the action in the name
 15 of the employee and for the employee's benefit or that of
 16 the employee's personal representative. If the insurer
 17 institutes the action, it shall pay to the employee any
 18 amount received by judgment or settlement which is in excess
 19 of the amounts paid or to be paid under the Workers'
 20 Compensation Act after the insurer's reasonable costs,
 21 including attorneys' fees for prosecuting the action, have
 22 been deducted from the recovery.

23 (4) An insurer may enter into compromise agreements in
 24 settlement of subrogation rights.

25 (5) ~~If--the--amount--of--compensation--and--other--benefits~~

1 payable under the Workers' Compensation Act have not been
 2 fully determined at the time the employee, the employee's
 3 heirs or personal representatives, or the insurer have
 4 settled in any manner the action as provided for in this
 5 section, the department shall determine what proportion of
 6 the settlement shall be allocated under subrogation. The
 7 department's determination may be appealed to the workers' compensation judge. Regardless of whether the amount of
 8 compensation and other benefits payable under the Workers'
 9 Compensation Act have been fully determined, the insurer and
 10 the claimant's heirs or personal representative may
 11 stipulate the proportion of the third party settlement to be
 12 allocated under subrogation. Upon review and approval by the
 13 department, the agreement constitutes a compromise
 14 settlement of the issue of subrogation and may not be
 15 reopened by the department.

17 (6) (a) The insurer is entitled to full subrogation
 18 rights under this section, even though the claimant is able
 19 to demonstrate damages in excess of the workers'
 20 compensation benefits and the third-party recovery combined.
 21 The insurer may subrogate against the entire settlement or
 22 award of a third party claim brought by the claimant or his
 23 personal representative, without regard to the nature of the
 24 damages.

25 (b) If no survival action exists and the parties reach

1 a settlement of a wrongful death claim without apportionment
 2 of damages by a court or jury, the insurer may subrogate
 3 against the entire settlement amount, without regard to the
 4 parties' apportionment of the damages, unless the insurer is
 5 a party to the settlement agreement."

6 **Section 5.** Section 39-71-431, MCA, is amended to read:

7 "39-71-431. Assigned risk plan. (1) Following the date
 8 on which the provisions of 39-71-2311 through 39-71-2320,
 9 and 39-71-2337, ~~and 39-71-2338~~ are implemented but no later
 10 than December 31, 1990, the commissioner of the department
 11 of labor and industry may order the establishment of and
 12 administer a plan to equitably apportion among the state
 13 fund, plan No. 3, and private insurers, plan No. 2, the
 14 coverage required by this chapter for employers who are
 15 unable to procure coverage through ordinary methods. In
 16 determining whether to order an assigned risk plan to be
 17 established, the commissioner shall consider the effect a
 18 plan would have on the availability of workers' compensation
 19 insurance and the need to provide competitive workers'
 20 compensation premium rates for employers in this state. If
 21 the commissioner orders the establishment of an assigned
 22 risk plan, it may not take effect until at least 6 months
 23 following the commissioner's order creating the plan.

24 (2) All plan No. 2 insurers and the state fund shall
 25 subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

Section 6. Section 39-71-704, MEA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services, fee schedules, and hospital rates. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or

dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the

form-and-at--the--times--required--by--the--department. The department--may--require--insurers-to-submit-information-to-be used-in-establishing--the--schedule. The--department--shall adopt--rules--establishing--relative--unit-values, groups-of specialties, the-procedures-insurers-must--use--to--pay--for services--under--the-schedule, and-the-method-of-determining the-median-of-billed--medical--fees. These--rules--must--be modeled-on-the-1974-revision-of-the-1969-California-Relative Value-Studies.

(3)--Beginning-January--1,--1988,--the-department-shall establish-rates-for--hospital--services--necessary--for--the treatment--of--injured--workers. Approved--rates-must-be-in effect-for-a-period-of-12-months-from-the-date-of--approval. The-department-may-coordinate-this-ratesetting-function-with other-public-agencies-that-have-similar-responsibilities.

(4)--(a)--Notwithstanding--subsection--(2),--beginning January-1,--1988,--through-December-31,--1991,--the-maximum-fees reimbursement--for-medical-services payable-by-insurers-must be-limited-to-the-relative-value-fee-schedule-established-in January-1987.

(b)--Reimbursement-for-medical-services-by-insurers--for calendar-year-1992-may-not-increase-more-than-the-percentage increase--in--the--state's-average-weekly-wage-since-July-1, 1987.

(c)--Beginning--January--1,--1993,--the--maximum

reimbursement--for--medical--services-by-insurers-may-not-be increased-more-than-the-annual-percentage--increase--in--the state's-weekly-wage;

(5)--(a)--Notwithstanding--subsection--(3),--beginning January-1,--1988,--through-December-31,--1991,--the-hospital rates-payable-by-insurers-must-be-limited-to--those-set--in January-1988.

(b)--Hospital--rates--payable--by--insurers-for-calendar year-1992-may-not-increase-more-than-the-percentage-increase in-the-state's-average-weekly-wage-since-July-1,--1987.

(c)--Beginning-January-1,--1993,--the--maximum--hospital rates-payable-by-insurers-may-not-be-increased-more-than-the annual--percentage--increase--in--the-state's-average-weekly wage."

Section-7--Section-39-71-7417-MCA,--is-amended-to-read:

"39-71-7417--Compromise-settlements, lump-sum-payments, and--lump-sum--advance--payments. (1)--The-biweekly-payments provided-for-in-this-chapter-may-be-converted, in--whole--or in--part,--into-a-lump-sum-payment. A-conversion-may-be-made only-upon-written-application-by-the-injured-worker-with-the concurrence-of-the-insurer. An-agreement-between-a-claimant and--insurer-for-a-partial-or-full-conversion-of-benefits-is subject-to-department-approval. The-approval-or-award--of--a lump-sum--payment-by-the-department-is-the-exception-and-not the-rule.

1 ~~{1}{2}--(a)-Benefits-may-be-converted-in-whole-to-a-lump~~
2 ~~sum:~~
3 ~~{i}--if-a-claimant-and-an-insurer--dispute--the--initial~~
4 ~~compensability-of-an-injury;-and~~
5 ~~{ii}-if-the-claimant-and-insurer-agree-to-a-settlement-~~
6 ~~{b}--The--agreement--is--subject-to-department-approval:-~~
7 ~~The--department--may--disapprove--an--agreement--under--this~~
8 ~~section subsection-{2}-only-if-there--is--not--a--reasonable~~
9 ~~dispute-over-compensability:-~~
10 ~~{c}--Upon---approval;---the---agreement---constitutes---a~~
11 ~~compromise-and-release-settlement-and-may-not-be-reopened-by~~
12 ~~the-department-or-by-any-court:-~~
13 ~~{d}--The-parties'-failure-to-reach-an-agreement-is-not-a~~
14 ~~dispute-over-which-a-mediator-or-the--workers'-compensation~~
15 ~~court-has-jurisdiction:-~~
16 ~~{2}{3}--(a)-If-an-insurer-has-accepted-initial-liability~~
17 ~~for--an--injury;-permanent-total-and-permanent-partial-wage~~
18 ~~supplement-benefits-may-be-converted-in-whole-to-a-lump-sum~~
19 ~~payment: A-lump-sum-conversion-may-not-be-greater-than-the~~
20 ~~present-value-of-the-estimated--future--benefits--using--the~~
21 ~~rate-prescribed-in-subsection-{7}:-~~
22 ~~{b}--The--conversion--may--be--made--only-upon-agreement~~
23 ~~between-a-claimant-and-an-insurer:-~~
24 ~~{c}--The-agreement-is-subject--to--department--approval:-~~
25 ~~The--department--may--approve-an-agreement-if: disapprove-an~~

1 ~~agreement-under-this-subsection-{3}-only--if--it--determines~~
2 ~~that--the--settlement-amount-is-inadequate;-if-the-agreement~~
3 ~~is-disapproved;-the-department-must-set-forth-in-detail--the~~
4 ~~reasons-for-the-disapproval:-~~
5 ~~{i}--there-is-a-reasonable-dispute-concerning-the-amount~~
6 ~~of-the-insurer's-future-liability-or-benefits;-or~~
7 ~~{ii}-the--amount-of-the-insurer's-projected-liability-is~~
8 ~~reasonably--certain--and--the--settlement--amount---is---not~~
9 ~~substantially--less--than-the-present-value-of-the-insurer's~~
10 ~~liability:-~~
11 ~~{d}--The-parties'-failure-to-reach-agreement--is--not--a~~
12 ~~dispute--over--which-a-mediator-or-the-workers'-compensation~~
13 ~~court-has-jurisdiction:-~~
14 ~~{e}{c}--Upon--approval;-the--agreement--constitutes---a~~
15 ~~compromise-and-release-settlement-and-may-not-be-reopened-by~~
16 ~~the-department-or-by-any-court:-~~
17 ~~{4}--(a)-If--an--insurer--has-accepted-initial-liability~~
18 ~~for-an-injury;-permanent-total-wage-supplement-benefits--may~~
19 ~~be--converted--in--whole--to--a-lump-sum-payment:-A-lump-sum~~
20 ~~conversion-may-not-be-greater-than-the-present-value-of--the~~
21 ~~estimated--future--benefits--using--the--rate--prescribed-in~~
22 ~~subsection-{7}:-~~
23 ~~{b}--The-department-may-approve-an-agreement-under--this~~
24 ~~subsection--if-the-parties-demonstrate-that-the-claimant-has~~
25 ~~financial-need-that:-~~

1 (i)--relates-to:
 2 (A)--the-necessities-of-life;
 3 (B)--an-accumulation-of-debt-incurred-prior-to-the
 4 injury; or
 5 (C)--a-self-employment-venture-that-is-considered
 6 feasible-under-criteria-established-by-the-department; and
 7 (ii)--arises-subsequent-to-the-date-of-injury-or-arises
 8 because-of-reduced-income-as-a-result-of-the-injury;
 9 c)--A-lump-sum-conversion-may-not-be-given-for-the
 10 purpose-of-purchasing-an-annuity-or-investing-in-real-estate
 11 for-business-purposes-or-for-any-type-of-passive-investment;
 12 (d)--Upon-approval,---the---agreement---constitutes---a
 13 compromise-and-release-settlement-and-may-not-be-reopened-by
 14 the-department;
 15 (3)(5)(a)-Permanent--partial--wage--supplement-benefits
 16 may-be-converted-in-part-to-a-lump-sum-advance;
 17 (b)--The-conversion-may-be-made-only-upon-agreement
 18 between-a-claimant-and-an-insurer;
 19 (c) The-agreement-is-subject-to-department-approval;
 20 (b)--The-department-may-approve-an-agreement under-this
 21 section if-the-parties-demonstrate-that-the-claimant-has
 22 financial-need-that:
 23 (i)--relates-to-the-necessities-of-life-or-relates-to-an
 24 accumulation-of-debt-incurred-prior-to-injury; and
 25 (ii)--arises--subsequent--to-the-date-of-injury-or-arises

1 because-of-reduced-income-as-a-result-of-the-injury;
 2 (d)--The-parties'-failure-to-reach-an-agreement-is-not-a
 3 dispute-over-which-a-mediator-or-the-workers'-compensation
 4 court-has-jurisdiction;
 5 (4)(6)--Permanent--total--disability--benefits--may--be
 6 converted in-part to-a-lump-sum-advance.-The--total--of--all
 7 lump-sum--advance--payments--to--a--claimant--may-not-exceed
 8 \$20,000.-A-conversion-may-be-made--only--upon--the--written
 9 application--of--the--injured-worker-with-the-concurrence-of
 10 the-insurer.-Approval-of-the-lump-sum-advance-payment--rests
 11 in--the--discretion-of-the-department.-The-approval-or-award
 12 of-a-lump-sum-advance-payment-by--the--department--or--court
 13 must--be--the--exception.-It-may-be-given The-department-may
 14 approve-an-agreement--under--this--subsection only--if--the
 15 worker-has-demonstrated-financial-need-that:
 16 (a)--relates-to:
 17 (i)--the-necessities-of-life;
 18 (ii)--an--accumulation--of--debt--incurred--prior--to-the
 19 injury; or
 20 (iii)--a--self-employment--venture as---set---forth---in
 21 39-71-1026 that--is--considered--feasible--under--criteria
 22 established-by-the-department; and
 23 (b)--arises-subsequent-to-the-date-of-injury--or--arises
 24 because-of-reduced-income-as-a-result-of-the-injury;
 25 (5)(7)--(a)-An--insurer--may-recoup-any-lump-sum-advance

1 amortized--at--the--rate--established--by--the--department;
2 prorated---biweekly--over--the--projected--duration--of--the
3 compensation-period;

4 {b}--The-rate-adopted-by-the-department-must-be-based-on
5 the-average-rate-for-United-States-10-year-treasury-bills-in
6 the-previous-calendar-year,--rounded--to--the--nearest--whole
7 number;

8 {c}--If---the---projected--compensation--period--is--the
9 claimant's-lifetime,--the-life-expectancy-must-be--determined
10 by--using--the--most--recent--table--of--life--expectancy-as
11 published-by-the-United-States-national-center--for--health
12 statistics;

13 {6}{8}--The Subject-to-other-provisions-of-this-section,
14 the-department-has-full-power,--authority,--and--jurisdiction
15 to--allow,--approve,--or-condition-compromise-settlements-or
16 lump-sum-advances-agreed-to-by--workers--and--insurers.---All
17 such--compromise--settlements-and-lump-sum-payments-are-void
18 without-the-approval-of--the--department.---Approval--by--the
19 department-must-be-in-writing.---The-department-shall-directly
20 notify-a-claimant-of-a-department-order-approving-or-denying
21 a-claimant's-compromise-or-lump-sum-payment.

22 {7}{9}--Subject--to--39-71-2401,--a--dispute--between--a
23 claimant-and-an-insurer-regarding-the-conversion-of-biweekly
24 payments--into--a-lump-sum-advance-under-subsection-(4) lump
25 sum is-considered-a-dispute,--for-which-a-mediator--and--the

1 workers'-compensation--court--have--jurisdiction--to-make-a
2 determination.---If-an-insurer--and--a--claimant--agree--to--a
3 compromise--and-release-settlement-or-a-lump-sum-advance-but
4 the-department-disapproves-the-agreement,--the--parties--may
5 request--the--workers'-compensation--court--to--review--the
6 department's-decision."A

7 **Section 6.** Section 39-71-2311, MCA, is amended to read:

8 "39-71-2311. Intent and purpose of plan. It is the
9 intent and purpose of the state fund to allow employers the
10 option to insure their liability for workers' compensation
11 and occupational disease coverage with a mutual insurance
12 fund. The state fund is required to insure any employer in
13 this state requesting coverage, and it may not refuse
14 coverage for an employer unless an assigned risk plan
15 established under 39-71-431 is in effect. The state fund
16 must be neither more nor less than self-supporting. Premium
17 rates must be set at least annually at a level sufficient to
18 ensure the adequate funding of the insurance program,
19 including the costs of administration, benefits, and
20 adequate reserves, during and at the end of the period for
21 which the rates will be in effect. In determining premium
22 rates, the state fund shall make every effort to adequately
23 predict future costs. When the costs of a factor influencing
24 rates are unclear and difficult to predict, the state fund
25 shall use a prediction calculated to be more than likely to

1 cover those costs rather than less than likely to cover
 2 those costs. Unnecessary surpluses that are created by the
 3 imposition of premiums found to have been set higher than
 4 necessary because of a high estimate of the cost of a factor
 5 or factors may be refunded by the declaration of a dividend
 6 as provided in this part. For the purpose of keeping the
 7 state fund solvent, it must implement variable pricing
 8 levels within individual rate classifications to reward an
 9 employer with a good safety record and penalize an employer
 10 with a poor safety record. An employer's payroll reporting
 11 and premium history and other relevant factors may also be
 12 considered in implementing variable pricing levels."

13 **Section 7.** Section 39-71-2339, MCA, is amended to read:

14 "39-71-2339. Cancellation of coverage -- thirty days'
 15 notice required. The state fund may cancel an employer's
 16 ~~right--to--operate--under--plan--No--3--of--the--Workers'~~
 17 ~~Compensation--Act~~ coverage under this part for failure to
 18 report payroll or pay the premiums due or for another cause
 19 provided in the insurance policy. ~~When--the--state--fund~~
 20 ~~cancels--an--employer's--coverage,--it--shall--notify--the--employer~~
 21 ~~of--its--intent--to--cancel--the--employer--at--least--30--days--before~~
 22 ~~the--cancellation--becomes--effective.~~ Cancellation may take
 23 effect only by written notice to the named insured at least
 24 30 days prior to the date of cancellation or, in cases of
 25 nonreporting of payroll or nonpayment of a premium, by

1 failure of the employer to submit payroll reports or pay a
 2 premium within 30 days after the due date. The state fund
 3 shall notify the department of the names and effective dates
 4 of all policies cancelled. However, the policy terminates on
 5 the effective date of a replacement or succeeding insurance
 6 policy issued to the insured. Nothing in this section
 7 prevents the state fund from canceling an insurance policy
 8 before a replacement policy is issued to the insured. After
 9 the cancellation date, the employer has the same status as
 10 an employer who is not enrolled under the Workers'
 11 Compensation Act unless a replacement or succeeding
 12 insurance policy has been issued."

13 ~~Section--107--Section--39--72--6017--MCA7--is--amended--to--read:~~

14 ~~"39--72--6017--Medical--panel--(1)--The--department--shall~~
 15 ~~develop--a--list--of--physicians--to--serve--on--the--occupational~~
 16 ~~disease--medical--panel--The--list--may--include--physicians~~
 17 ~~nominated--by--the--board--of--medical--examiners--A--physician--on~~
 18 ~~the--panel--must--be--certified--by--his--specialty--board--or--be~~
 19 ~~eligible--for--certification--in--the--specialty--area--appropriate~~
 20 ~~to--the--claimant's--condition--in--relation--to--this--chapter.~~

21 ~~(2)--The--department--or--an--insurer--shall--select--a--panel~~
 22 ~~physician--to--examine--a--claimant7--as--required7--The--department~~
 23 ~~shall--appoint7--as--required7--one--member--of--the--panel--to--be~~
 24 ~~the--chairman."~~

25 ~~Section--117--Section--39--72--6027--MCA7--is--amended--to--read:~~

*39-72-602;--insurer-may-accept-liability-----procedure
for--medical--examination--when--insurer--has--not--accepted
liability;--(1)--An-insurer-may-accept-liability-for-a-claim
under-this-chapter-based-on-information-submitted-to-it-by-a
claimant;

(2)--in-order-to-determine-the-compensability-of--claims
under--this--chapter--when--an--insurer--has--not--accepted
liability, or-questions-liability-or-in-order-to-determine
whether--the-claimant-is-totally-disabled-or-to-what-extent,
if-any,--benefits-must-be-reduced-pursuant-to-39-72-706, the
following-procedure-must-be-followed:

(a)--The--department or--an--insurer-with-notice-to-the
department shall-direct-the-claimant--to--a--member--of--the
medical--panel--for--an--examination; The-panel-member-shall
conduct-an-examination-to-determine-whether-the-claimant--is
totally--disabled--and--is--suffering--from--an-occupational
disease; The-panel-member--shall--submit--a--report--of--his
findings-to-the-department;

(b)--Either--the--claimant-or-the-insurer-may, within-20
days-after-the-receipt-of-the--report--by--the--first--panel
member,--request--that--the-claimant-be-examined-by-a-second
panel-member; If-a-second-examination-is-requested,--the
department or-an-insurer-with-notice-to-the-department shall
direct--the--claimant--to--a--second--panel-member-who-shall
conduct-an-examination-to-determine-whether-he-believes--the

claimant--is--totally--disabled--and--is--suffering--from-an
occupational-disease and-to-what-extent,--if--any,--benefits
must--be--reduced--pursuant--to--39-72-706; The-panel-member
shall-submit-a-report-of-his--findings--to--the--department;
When-a-second-examination-has-been-requested, the-reports-of
the--examinations-shall-be-submitted-to-three-members-of-the
medical-panel-for-review; A--medical--panel--member--or--the
panel--may, in-order-to-assist-the-panel-member-or-the-panel
in--reaching--a--conclusion,--consult--with--the--claimant's
attending-physician; The-three-panel-members-shall--issue--a
report--concerning--the--claimant's--physical--condition-and
whether-the--claimant--is--suffering--from--an--occupational
disease;

(c)--If-a--second--examination--is--not--requested, the
department-shall-issue-its--order--determining--whether--the
claimant--is--entitled-to-occupational-disease-benefits-based
on-the-report-of-the-first-examining-physician; If-a--second
examination--is--requested, the--department-shall-issue-its
order-based-on-the--report--of--the--three--members--of--the
medical-panel;

(d)--For-the-purpose--of--reviewing-the-reports-of-the
examinations-and-issuing-the-report-under-subsection-(2)(b),
the-three-members-of-the-medical--panel--shall--be--the--two
members-of-the-panel-who-examined-the-claimant-and-the-panel
chairman; If--the-panel-chairman-has-examined-the-claimant,

1 ~~the-panel-chairman--shall--appoint--another--member--of--the~~
2 ~~medical-panel-to-be-the-third-member."~~

3 NEW SECTION. **Section 8.** Repealer. Section 39-71-2338,
4 MCA, is repealed.

5 NEW SECTION. **Section 9.** Effective date. [This act] is
6 effective July 1, 1991.

-End-